

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBIN NIXON,	)	
Plaintiff	)	
	)	
v.	)	CIVIL ACTION NO. 05-101 ERIE
	)	
NORFOLK SOUTHERN CORPORATION	)	
and NORFOLK SOUTHERN RAILWAY	)	
COMPANY, INC.,	)	
Defendants	)	ELECTRONICALLY FILED

**APPENDIX TO DEFENDANTS' MOTION TO BAR  
JAMES A. GUARINO AS EXPERT WITNESS AND TO EXCLUDE  
GUARINO'S TESTIMONY AND OTHER EVIDENCE IN OPPOSITION  
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants NORFOLK SOUTHERN CORPORATION and NORFOLK SOUTHERN RAILWAY COMPANY, INC., by their attorneys, MacDonald, Illig, Jones & Britton LLP, file this Appendix to Defendants' Motion to Bar James R. Guarino as Expert Witness and to Exclude Guarino's Testimony and Other Evidence in Opposition to Defendants' Motion for Summary Judgment, pursuant to Rule 702 of the Federal Rules of Evidence.

I hereby certify that this Appendix contains true and correct copies of the transcript of the deposition of James A. Guarino taken on May 18, 2007, and Guarino Deposition Exhibit Nos. 1 through 7 including his resume, expert report dated February 12, 2007, and supplemental expert report dated February 23, 2007:

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(oversized original in possession of Tibor R. Solymosi, Esq., counsel for  
plaintiff Robin Nixon)

Respectfully submitted,

s/ Roger H. Taft

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Attorneys for Defendants  
Norfolk Southern Corporation and  
Norfolk Southern Railway Company, Inc.

**Tab A**  
**Deposition of James A. Guarino (5/18/07)**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 - - -  
4 ROBIN NIXON, )  
5 Plaintiff, )  
6 vs. ) CIVIL ACTION  
7 ) NO. 05-101 ERIE  
8 NORFOLK SOUTHERN CORPORATION )  
9 and NORFOLK SOUTHERN RAILWAY )  
10 COMPANY, INC., )  
11 Defendants. )

12 - - -  
13 Deposition of JAMES A. GUARINO

14 Friday, May 18, 2007  
15 - - -

16 The deposition of JAMES A. GUARINO, called  
17 as a witness by the Defendants, pursuant to Notice and  
18 the Federal Rules of Civil Procedure pertaining to the  
19 taking of depositions, taken before me, the  
20 undersigned, Deborah L. Endler, a Notary Public in and  
21 for the Commonwealth of Pennsylvania, at the offices  
22 of MacDonald, Illig, Jones & Britton, LLP, 100 State  
23 Street, Suite 700, Erie, Pennsylvania, 16507,  
24 commencing at 9:40 o'clock a.m., the day and date  
25 above set forth.

26 - - -  
27 COMPUTER-AIDED TRANSCRIPTION BY  
28 MORSE, GANTVERG & HODGE, INC.  
29 PITTSBURGH, PENNSYLVANIA  
30 412-281-0189  
31 - - -

32 ORIGINAL

1 APPEARANCES:

2 On behalf of the Plaintiff:

3 Segel & Solymosi:  
4 Tibor R. Solymosi, Esquire  
5 818 State Street  
6 Erie, Pennsylvania 16501

7 On behalf of the Defendants:

8 MacDonald, Illig, Jones & Britton, LLP:  
9 Roger H. Taft, Esquire  
10 100 State Street, Suite 700  
11 Erie, Pennsylvania 16507

12 - - -

13

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1 JAMES A. GUARINO

2 called as a witness by the Defendants, having been  
3 first duly sworn, as hereinafter certified, was  
4 deposed and said as follows:

5 EXAMINATION

6 BY MR. TAFT:

7 Q Mr. Guarino, would you state your full name  
8 and home address?

9 A James A. Guarino, 10859 Hill Road,  
10 Wattsburg, W-a-t-t-s-b-u-r-g, PA, 16442.

11 Q And your age and date of birth?

12 A I'm 58. October 30th, 1948.

13 Q Mr. Guarino, we met briefly before we  
14 started. My name is Roger Taft.

15 A Yes.

16 Q I'm representing the Defendants in a  
17 lawsuit filed by Robin Nixon and you have been  
18 identified as an expert witness on behalf of  
19 Mr. Nixon. We are here today so that I can ask  
20 questions regarding the expert reports that you have  
21 provided --

22 A Yes.

23 Q -- in this case. I am going to try to be  
24 as clear as I can with my questions, but if I ask you  
25 something that you don't understand or if I ask you

1 something you don't hear clearly enough --

2 A I will ask you again.

3 Q -- please ask me to repeat it and I'll be  
4 happy to do that.

5 A All right.

6 Q Also, as we proceed with your deposition,  
7 if you want to take a break to get a drink of water or  
8 coffee or use the restrooms or anything else, just let  
9 us know. We'll be happy to accommodate you.

10 A All right.

11 Q Other than if I pose a question, I'd like  
12 you to answer the question before we take our break.

13 A All right.

14 Q Is that okay?

15 A That's fine.

16 Q Finally, before we get further under way,  
17 is there any reason that you are aware of why you  
18 would not be able to accurately respond to my  
19 questions today?

20 A No.

21 Q Okay.

22 A No.

23 Q Good. Mr. Guarino, I'm going to start with  
24 some questions regarding your business?

25 A Yes.

1 Q The letterhead of your expert report makes  
2 reference to Guarino Enterprises.

3 A Yes.

4 Q What is your affiliation with that  
5 business?

6 A Owner operator. I actually do the work,  
7 also. I bid and I do the work.

8 Q Is Guarino Enterprises a corporation?

9 A No, sole proprietor.

10 Q And you are the sole owner; is that  
11 correct?

12 A Yes.

13 Q And in summary form, what is the nature of  
14 your business? What type of work do you do?

15 A Parking lot maintenance.

16 Q And when you talk about parking lot  
17 maintenance, to be --

18 A Asphalt repair.

19 Q Wait a minute. In order for her to be able  
20 to get a transcript today, you got to let me --

21 A Finish. Go ahead.

22 Q I know you are anticipating what I'm --

23 A I won't do that again.

24 Q -- going to say, but that makes life  
25 difficult for the court reporter.



1 A All right.

2 Q So my question was would you tell me a  
3 little more specifically what jobs or duties are  
4 involved in what you referred to as parking lot  
5 maintenance?

6 A Well, we do asphalt repair. We mill, mill  
7 out and repair. We do crack filling which is hot  
8 pour. We do line striping. We lay out to print and  
9 we do design roadways, you know, we do the line  
10 striping on the roadways and stuff and arrows,  
11 stencils. During the winter months we do snow plowing  
12 and sidewalk work.

13 Q When you say sidewalk work, removal of  
14 snow?

15 A Removal of snow from sidewalks.

16 Q And when you talk about line striping, this  
17 would be in parking lots?

18 A Parking lots, yeah, I've done roadways.  
19 I've done boroughs. I've done walkways. I've done  
20 highway roadways.

21 Q When you say you have done highway roadway  
22 line striping, what does that involve?

23 A I did one, one was at a Wal-Mart on west  
24 side. I did the lines. I did the divider lines and  
25 the arrows.

1 Q Okay, on what highway?

2 A It would be Asbury.

3 Q Asbury Road?

4 A Yeah.

5 Q Okay. Did you do that pursuant to a  
6 contract with Wal-Mart or a contract with some other  
7 entity?

8 A With McCormick's.

9 Q Were you a subcontractor --

10 A Yes.

11 Q -- of McCormick?

12 A Yes.

13 Q And in order to do the line striping and  
14 the turn arrows on Asbury Road for the new Wal-Mart --

15 A Yes.

16 Q -- and by the way, was it on Asbury Road?

17 A Yes.

18 Q Okay. Were you provided with any plans and  
19 specifications to match up --

20 A Yes.

21 Q So you didn't prepare the plans and  
22 specifications to do the line striping --

23 A No.

24 Q -- or the turn arrows?

25 A No.

1 Q You were just a subcontractor of  
2 McCormick's to do the actual --

3 A Right.

4 Q -- painting of the highway surface --

5 A Right.

6 Q -- or road surface. Aside from that one  
7 occasion, have you done any other line striping on  
8 public roads or streets?

9 A No.

10 Q Have you done any other directional arrows  
11 on public roads or streets other than that one  
12 occasion for Wal-Mart?

13 A Just like I told you, walkways for  
14 boroughs.

15 Q Those would be sidewalks?

16 A They are the walkways on the roads. I've  
17 done in --

18 Q Oh, you mean like crosswalks?

19 A Crosswalks, yes.

20 Q Okay. What borough is that?

21 A Lawrence Park.

22 Q How often did you do that for Lawrence  
23 Park?

24 A I did it one year. That was directly  
25 through them.

1 Q You contracted through Lawrence Park?

2 A Yes.

3 Q What year was that approximately?

4 A God, I couldn't tell you.

5 Q Okay.

6 A You know, you are asking for details. I do  
7 a lot of work.

8 Q Was it a long time ago?

9 A I couldn't say. Could be six, could be  
10 seven years. Could be five.

11 Q Okay. When did you do the work for  
12 Wal-Mart?

13 A Oh, that was awhile ago, too.

14 Q Several years ago?

15 A Yeah.

16 Q When you did the crosswalks, are you  
17 referring to just to putting the lines across the  
18 street?

19 A Yeah, lines and dividers.

20 Q Are the dividers --

21 A Hash marks in the middle.

22 Q You got to let me finish. What are the  
23 dividers?

24 A They are hash marks. They are actually  
25 like diagonal strips that you run across to more or

1 less designate that it is a walkway.

2 Q In installing the crosswalks for Lawrence  
3 Park on that one occasion, did you work off plans or  
4 specifications that Lawrence Park provided to you?

5 A No, it's standard. It's a standard, you  
6 know, width from the transition on the walk to the  
7 other transition.

8 Q Were you repainting something that was  
9 there already?

10 A No.

11 Q What resource material did you use to get  
12 the standard --

13 A Measure and snap them. Snap them and  
14 stripe them.

15 Q How did you know where to place --

16 A There is a transition on the sidewalk.

17 Q You have to wait til I finish. Where did  
18 you go to determine where you would put your crosswalk  
19 and the striping that you referenced? Was it just by  
20 going to the site and determining this is where the  
21 crosswalk should be?

22 A Yes.

23 Q Okay. And when you said it was just  
24 standard, that's just based on your experience of  
25 looking at other crosswalks?

1           A       That's the way they are supposed to be,  
2 transition to transition.

3           Q       How long has Guarino Enterprises been in  
4 existence?

5           A       28 years.

6           Q       How many employees do you have?

7           A       At the present time there is two in the  
8 office, there is one guy sweeping. We do parking lot  
9 sweeping at night. And then there is myself and two  
10 other gentlemen.

11          Q       What do the other two do?

12          A       Laborers.

13          Q       I think you told me that as an owner  
14 operator, you don't just sit in the office, you are  
15 out in the --

16          A       No, I work.

17          Q       Okay. What is the address of Guarino  
18 Enterprises?

19          A       It's at present it's 230 East 21st. That's  
20 where I have my equipment at. The offices are out at  
21 my house.

22          Q       So you keep the equipment at East 21st  
23 street address, but the business is run out of your  
24 home?

25          A       Right, the reason I do that is because of

1 fuel.

2 (THEREUPON, Guarino Deposition Exhibit 1  
3 was marked for identification.)

4 Q I show you, Mr. Guarino, what's been marked  
5 as Guarino Exhibit 1 which is a copy of a Notice of  
6 Deposition scheduling your deposition before --

7 A Yes. That's what, I left it at home. I  
8 forgot it. I left it on the dining room table.

9 Q Would you refer to the second page of the  
10 deposition notice? Back one. There is a list  
11 requesting you to bring certain documents and things  
12 with you to your deposition, and the first item on  
13 that list was your most current curriculum vitae. And  
14 I know as part of your expert report you had provided  
15 a one page curriculum vitae; is that right --

16 A Yes.

17 Q -- that you marked as a resume.

18 A Don't have a big one.

19 (THEREUPON, Guarino Deposition Exhibit 2  
20 was marked for identification.)

21 Q I'm going to mark it separately just so we  
22 have it. I show you what's been marked as Guarino  
23 Deposition Exhibit 2. Is that a copy of your most  
24 current resume?

25 A Yes, it is.

1           Q       Now, item two requested that you bring with  
2   you today your complete expert witness file with  
3   respect to the April 27, 1997 accident, including but  
4   not limited to your expert reports dated February  
5   12th, 2007 and February 23, 2007 and all drafts  
6   thereof and any and all documents and things upon  
7   which you relied in arriving at your opinions and/or  
8   in preparing your expert reports.

9           A       Yes.

10          Q       Now, you provided, you let me look at a  
11   folder this morning before we began. Does that folder  
12   constitute all the materials that you had --

13          A       Yes.

14          Q       -- in your possession regarding your expert  
15   witness services in this case?

16          A       Yeah, this is what I compiled.

17          Q       Okay. At any point in time did you compile  
18   any handwritten or other notes in connection with this  
19   assignment?

20          A       No, what I normally do, I do yellow pad. I  
21   make scratch pads and I throw them away. I do that on  
22   my estimates. I don't save them. Then the final  
23   documents, she stores them, puts them in the computer  
24   and keeps a hard copy.

25          Q       Okay. So when did you destroy your yellow



1 pages --

2 A When I'm done.

3 Q Let me finish. When did you destroy your  
4 handwritten notes, whether they were on yellow pages  
5 or otherwise, in connection with the work that did you  
6 as a expert?

7 A When I compiled this. When I put my, the  
8 finished product together, I throw that stuff away. I  
9 don't keep it.

10 Q Is there any reason why you didn't keep  
11 your notes?

12 A Because I keep terrible notes. I just  
13 throw them away, you know. When I'm done figuring, I  
14 throw the figures away. A lot of times I never save  
15 the figures or even documents. I throw them away. I  
16 shred them. She shreds them and gets rid of them.  
17 And then I keep the main copies. Because we would be  
18 inundated with papers, so that's why we do it.

19 Q How many times have you served as an expert  
20 witness?

21 A This is the first time.

22 Q Okay. And I understand that there may be a  
23 practice that you have with respect to other work that  
24 you do, but is there any special reason in this case  
25 as an expert witness that you would have destroyed

1 notes and other materials related to the work that you  
2 did?

3 A No, it's common practice. It's something  
4 that I do. Any bid that I do, I get rid of it and I  
5 keep the main copy.

6 Q Let's go on to item 3. Any and all  
7 documents and things upon which you relied in arriving  
8 at your opinions and/or in preparing your expert  
9 reports, if not contained in your expert witness file.

10 Is there anything other than what you  
11 brought with you today upon which you relied in  
12 arriving at the opinions and conclusions and the two  
13 expert reports?

14 A No, that's everything that's in there.

15 Q Item 4 requested records of all billings  
16 and payments with respect to your expert services  
17 including all time records for such services. Have  
18 you submitted any bills?

19 A No, 'cause the way -- I haven't included  
20 the time I'm here. I haven't even included that,  
21 because I didn't know how long I was going to be here.

22 Q Are you keeping track --

23 A Oh, yes.

24 Q -- of the time that you spent --

25 A Oh, yes.

1 Q Did you bring those time records?

2 A No, I didn't. No, I didn't.

3 Q You have them back at your office?

4 A Yes, I do.

5 Q Would you please provide those to  
6 Mr. Solymosi?

7 A Yes.

8 Q I'm looking for the time records --

9 A All right.

10 Q If you haven't submitted a bill so far --

11 A Well, I had an initial here, which you  
12 have, but I haven't submitted a final bill.

13 Q I'm looking at the time records that would  
14 establish the amount of time you spent in your expert  
15 witness services that later will turn into a bill --

16 A All right.

17 Q -- or that did turn into a bill?

18 A All right.

19 Q You understand?

20 A I can provide that.

21 Q Because I don't remember seeing any bills  
22 that you submitted.

23 A No, I didn't. I didn't submit a final bill  
24 because I didn't complete the job yet.

25 Q Did you submit any preliminary bills?

1 A No.

2 Q Well, I'm looking for the records of the  
3 time spent --

4 A All right.

5 Q -- and will later become a bill or bills,  
6 okay? Understood?

7 A Yes, sir.

8 Q I'm going to ask you some questions about  
9 your formal education. According to your resume, you  
10 graduated from Technical Memorial High School in 1967;  
11 is that correct?

12 A Yes.

13 Q And the resume also indicates that you  
14 attended Gannon College for one year, 1976 to 1977?

15 A Yeah, I was pursuing a police career and I  
16 thought I needed some credits for that.

17 Q What was the course of study at Gannon?

18 A Well, it was criminology and I had to take  
19 the basic courses, you know, history, English.

20 Q Was that the equivalent of a freshman year  
21 course of study at --

22 A I don't know if you could consider it a  
23 freshman year. I was taking courses that would help  
24 me towards that. But, you know, trying to run a  
25 family and do that, that's what I thought I could get

1 in, the police department..

2 Q Do you recall what courses you took during  
3 that one year at Gannon?

4 A God, that's a long time. That's 30, 30  
5 some years ago. No, I can't.

6 Q Did you attend a full year?

7 A No, it was like a partial, like a half a  
8 year I think I went.

9 Q And then dropped out after the first  
10 semester?

11 A Yeah, it just got too hard trying to raise  
12 a family and everything, because I was working a  
13 full-time job, too.

14 Q Were you working at General Electric  
15 Company?

16 A Yes.

17 Q Aside from the partial year at Gannon  
18 College, 1976, 1977, have you taken any other college  
19 courses?

20 A No.

21 Q Do you hold any licenses or certifications  
22 other than, for instance, a driver's license?

23 A No, other than when I was welding at  
24 General Electric, but no.

25 Q You had a welder's certificate?

1 A Uh-huh.

2 Q You got to say yes or no.

3 A Yes.

4 Q Are you a member of any professional  
5 organizations or societies?

6 A No.

7 Q I want to ask you some questions about your  
8 employment experience.

9 A Yes.

10 Q Your resume indicates that you worked at  
11 General Electric Company as a welder between 1971 and  
12 1986; correct?

13 A Yes.

14 Q What did you do between graduation from  
15 high school in 1967 and beginning to work at GE?

16 A I had military time and then I worked at  
17 Hammermill.

18 Q How long did you work at Hammermill?

19 A I worked -- oh, boy, you are asking me to  
20 go way back on stuff. God, probably three years. I  
21 worked Lord Corporation when I got out of school.  
22 That was the initial before I went in the service.

23 Q How long did you work at Lord Corporation  
24 before going into the service?

25 A God, I think I was there about a year.

1 Q What kind of job or jobs did you hold at  
2 Lord?

3 A I was a laborer, a laborer's job when I  
4 went in. I worked in the batch plant. There is like  
5 a rubber plant, worked there.

6 Q What type of assignments did you have as  
7 part of your military duty?

8 A I was in a maintenance unit out of  
9 Germany. We were actually padding trucks and stuff  
10 down and the military was moving out of Germany, and  
11 we were actually padding vehicles down. So we had to  
12 do maintenance and we had to make sure that they were  
13 padded down and purged and fogged.

14 Q When you say padded down, what do you mean  
15 by that?

16 A Well, they put them on giant pads and they  
17 tape the windows, purge them.

18 Q Moth balls?

19 A They put them in moth balls, yes.

20 Q That's what I was going to say. Did you  
21 hold your position at Hammermill paper after the  
22 military?

23 A Yeah, I did. I came back and I worked it  
24 for awhile and, you know, I stayed there for awhile  
25 and I just didn't see any place to go, so I applied at

1 General Electric and I got in there on an entry  
2 position.

3 Q When you worked at Hammermill, what  
4 positions did you hold?

5 A I was a laborer again. I ran a cutter, did  
6 packing and I moved skids of paper, you know, sorting  
7 skids.

8 Q You told me a little bit earlier that you  
9 then went to General Electric Company from 1971 to  
10 1986 --

11 A Yes.

12 Q -- is that right? Were you a welder the  
13 entire time at GE?

14 A The first three months I was a snagger. I  
15 started out snagging steel that had been burned.

16 Q What's a snagger do?

17 A It knocks the burrs off the burned  
18 products, so that they are ready for assembly. And  
19 then after that I went to weld school.

20 Q And held a welding position through the  
21 rest of your --

22 A Through the rest of my time there, piece  
23 work welding.

24 Q Again, referring back to your resume, it  
25 appears that part way through the time that you were



1 working at GE, you formed your present business  
2 Guarino Enterprises?

3 A I worked GE and for five years I built my  
4 business while I was working there.

5 Q And how did you decide to leave GE and go  
6 into your business full-time?

7 A Monetary.

8 Q You built the business up enough --

9 A Yes.

10 Q -- at that point that it made sense?

11 A I either made a decision to stay or to go  
12 on my own.

13 Q Aside from running your business, Guarino  
14 Enterprises, your sole proprietorship, have you held  
15 any other employment since leaving GE in 1986?

16 A No, that's all I've been doing is working  
17 it and building it.

18 Q You told me a little bit earlier that this  
19 case is the first time you have ever served as an  
20 expert witness in any type of lawsuit --

21 A Yes.

22 Q -- is that correct? And aside from that,  
23 has there ever been a time that you have given a  
24 deposition in any type of lawsuit?

25 A No.

1 Q Has there ever been a time where you have  
2 provided court testimony in any type of lawsuit?

3 A No.

4 Q At any time, Mr. Guarino, have you authored  
5 or published any types of articles on any types of  
6 subject matter?

7 A No.

8 Q At any other time have you had involvement  
9 in another case dealing with a minor riding a bicycle  
10 on a public street who was injured after grabbing onto  
11 a moving train?

12 A What do you mean there?

13 Q I'll have her repeat it and then if you  
14 don't understand it, I'll ask it again.

15 MR. TAFT: Read it back, please.

16 (Read back.)

17 A No.

18 Q In your expert report you state "My opinion  
19 is based on my background, experience and training in  
20 the field of asphalt patching, preventive maintenance,  
21 repairs and safety/directional striping." Is that an  
22 accurate statement of what you consider your areas of  
23 expertise to be?

24 A Yeah, asphalt. Asphalt marking, I've done  
25 that for 28 years.

1 Q You don't claim, Mr. Guarino, do you, that  
2 you are an expert in traffic engineering?

3 A I don't profess to be an engineer.

4 Q All right. You don't profess to be an  
5 expert in the design of streets or roads?

6 MR. SOLYMOSI: Object to the form of the  
7 question. I'd like you to explain what you mean  
8 by an expert, Roger. Do you mean through special  
9 training?

10 MR. TAFT: Yes.

11 Q Do you profess to be an expert in the  
12 design of streets or roadways?

13 A No, I don't.

14 Q Do you profess to be an expert in the  
15 design of effective warnings?

16 A No, I'm not an expert in that, but I've  
17 applied, I've applied striping. I've applied asphalt.  
18 I've done the work, hands on.

19 Q You don't profess to be an expert in human  
20 factors?

21 A No, I'm not a psychologist.

22 Q Let me refer you now to your expert  
23 reports.

24 (THEREUPON, Guarino Deposition Exhibit 3  
25 was marked for identification.)

1 Q Let me show you what's been marked as  
2 Guarino Deposition Exhibit 3. Is that a copy of the  
3 expert report that you provided in this lawsuit dated  
4 February 12, 2007?

5 A Yes.

6 Q Let me show you now what's been marked as  
7 Guarino Deposition Exhibit 4.

8 (THEREUPON, Guarino Deposition Exhibit 4  
9 was marked for identification.)

10 Q Is that a copy of what you refer to as an  
11 amended report in this lawsuit dated February 23,  
12 2007?

13 A Yes.

14 Q Mr. Guarino, in accordance with the Federal  
15 Rules of Civil Procedure, do the two reports that have  
16 been marked as Guarino Deposition Exhibits 3 and 4 set  
17 forth a complete statement of all of your opinions  
18 regarding the costs to install striping, warning signs  
19 and rumble strips on West 19th Street in Erie,  
20 Pennsylvania, approximately 1.2 miles on West 19th  
21 Street from Peach Street to Raspberry Street, the  
22 purpose would be to prevent and/or discourage children  
23 from riding along trains and gabbing onto the train in  
24 order to be pulled along the roadway?

25 A Yes.

1 Q And do those reports set forth and identify  
2 all of the data or other information that you  
3 considered in forming your opinions?

4 A Yes.

5 Q And do those reports also contain all  
6 exhibits that would be used to support or summarize  
7 your opinions in this case?

8 A Yeah, they are in here.

9 Q When were you first contacted to serve as  
10 an expert witness on behalf of Robin Nixon?

11 A That was back in February.

12 Q Of what year?

13 A 2007.

14 Q Do you have any records of that initial  
15 contact?

16 A No, other than the first visit, that's all.

17 Q When you say the first visit, what do you  
18 mean?

19 A He wanted me to come up with a deterrent.

20 Q When you say he, who contacted you in  
21 February of 2007?

22 A Mr. Solymosi.

23 Q And what did he tell you when he first  
24 contacted you?

25 A He just wanted to have a way to deter the

1 kids from riding bicycles and grabbing onto the  
2 trains.

3 Q Did he suggest to you during that initial  
4 call a possible way to deter --

5 A No.

6 Q What else did he tell you?

7 A He just told me to compile a deterrent and  
8 to come up with some figures as far as cost and how,  
9 you know, how much it would cost and how it would come  
10 about.

11 Q So there was no discussion at all during  
12 that call regarding rumble strips?

13 A There was a discussion about reflectors.  
14 There is an embossed reflector that they put on the  
15 highways. He had said something about a stick on,  
16 stick on reflectors for these tar and chip roads. And  
17 then they make an above ground rumble strip on the  
18 state highways. And I had suggested to him that cost  
19 effective wise, the milled ones would probably be more  
20 cost effective to put in and would be a deterrent  
21 because of the, you know, the shock factor.

22 Q So during this initial call, Mr. Solymosi  
23 was the one that had suggested above ground rumble  
24 strips, and you suggested that if you milled them,  
25 that might be more cost effective?

1           A       More cost effective and it would probably  
2 do a better job. But there was a lot of, those items,  
3 we had discussed all of them. But I felt that, and we  
4 had talked together that the rumble strips and milled  
5 in would probably be the best form to deter that.

6           Q       When you were referring to milled rumble  
7 strips, were you referring to the type of rumble  
8 strips that appear on interstate highways --

9           A       Yes.

10          Q       -- such as the Pennsylvania Turnpike?

11          A       Yes, Turnpike, I-90.

12          Q       And do you know if those rumble strips are  
13 installed pursuant to PennDOT specifications?

14          A       Yeah, I think Donegal, you had the estimate  
15 there from Donegal Corporation. Because I couldn't do  
16 them. I would sub to them. And they gave a drawing  
17 of how they were, the depth and the distance that they  
18 were spaced.

19          Q       Is it your understanding that these rumble  
20 strips, these milled rumble strips that appear on  
21 interstate highways or the Pennsylvania Turnpike, are  
22 installed along the berm of the highway for the  
23 purpose of waking up, so to speak, a drowsy driver --

24          A       Right.

25          Q       -- who may be headed onto the berm?

1 A Yes.

2 Q That's the purpose of those rumble strips?

3 A Yes.

4 Q And in your expert report you recommended  
5 that the same type of rumble strips that you would see  
6 along the shoulders of the interstate highways be  
7 installed on West 19th Street?

8 A Sure, it would wake a kid up from riding  
9 along the side of a train trying to grab onto it.  
10 Plus it would be, like I said, a deterrent.

11 Q Because of what you refer to as the shock  
12 value?

13 A Oh, yes.

14 Q Would you agree with me that that shock  
15 value could include causing a bicyclist to lose  
16 control of a bicycle?

17 A I would say that if they had rode on them,  
18 if they rode on them initially, which they would  
19 probably, they probably wouldn't go near it.

20 Q They wouldn't go back?

21 A They wouldn't go back.

22 Q But maybe the first time they went on them,  
23 the shock value --

24 A Probably without the train. But I mean, if  
25 they knew it was bad prior to that, they probably



1 wouldn't go and ride them and try to grab the train,  
2 because it would be even worse. I think it's ideal  
3 deterrent. That's why I recommended it.

4 Q In making that recommendation, did you  
5 research or look for any type of published studies  
6 that showed you that installation of rumble strips of  
7 the type used on interstate highways that you are  
8 recommending were an effective deterrent to a  
9 bicyclist who might grab onto moving trains? Did you  
10 see anything in any publication that supported that  
11 proposal?

12 A I've seen in Pavement Magazine, you know,  
13 different articles. And I might have had an article  
14 that I read, you know. But to specifically say for,  
15 you are asking me to say specifically on something  
16 like that, I mean, nobody is going to write a specific  
17 report. But there is deterrents for all kinds of  
18 things.

19 Q Would you agree with me then, I think is  
20 what you are telling me, that you don't recall seeing  
21 a single article directed to the use of rumble strips  
22 to deter bicyclists from grabbing onto moving trains,  
23 not a single one?

24 A No, I can't agree with you, because I don't  
25 know.

1 Q Can you recall seeing a single article in  
2 which someone recommended the installation of rumble  
3 strips on a public street --

4 A No, but I was --

5 Q Let me finish. For the purpose of  
6 deterring a bicyclist to grab onto a moving train?  
7 Just answer my question first.

8 A No.

9 Q Did you review any documents in order to  
10 come up with the conclusion that these rumble strips  
11 of the type that you see on shoulders on interstate  
12 highways should be installed on 19th Street?

13 A No, I did, I did my own deterrent. He  
14 wanted an estimate. I gave him an estimate of the  
15 deterrent. That's what I put together.

16 Q Okay. In other words, and correct me if  
17 I'm wrong, after your discussion with Mr. Solymosi  
18 where he raised the idea of rumble strips and you said  
19 well, if you mill them, they would be more cost  
20 effective, he then said well, go ahead and prepare an  
21 estimate of the cost of installing milled rumble  
22 strips along West 19th Street?

23 A Yeah, put something together that you would  
24 put together to deter a person from riding a bicycle  
25 along the side of a train. And that's what I did.

1 Q And that was the first time you have ever  
2 done that?

3 A Yes.

4 Q The second part of your expert opinion has  
5 to do with the cost of installing yellow stripes and  
6 signs between the rails that would state "DANGER-NO  
7 BIKES"?

8 A Yes.

9 Q How did you come up with the idea of  
10 installing the yellow stripes and painting "DANGER-NO  
11 BIKES" between the rails?

12 A Well, I figure within the parameters of the  
13 rumble strips, you mark it on the outside and then  
14 have the stenciling on the inside, that would be a  
15 danger area. So it would give them the parameters  
16 within that area. And where the lines are placed on  
17 the outside, you could see them so it would be highly  
18 visible.

19 Q Would any of these signs, "DANGER-NO  
20 BIKES," be outside the rails and within the rumble  
21 strip area or would all these signs be inside the  
22 rails?

23 A Inside the rails.

24 Q You state in your expert report that, and  
25 I'm referring to page 1, item 1, "The rumble strip

1 would have been placed parallel to the railroad tracks  
2 and approximately 72 and one-half inches from the  
3 center of the track to the center of the rumble  
4 strip," right?

5 A Yes.

6 Q And then you go on to say below that,  
7 "Based upon my measurements of a number of rail cars,  
8 an average width of rail cars is approximately 128 and  
9 a half inches. A bicycle is approximately 30 inches  
10 in width and assuming that a child would be reaching  
11 out pretty much straight forward, the centerline of  
12 the rumble strip should be approximately 72 and a half  
13 inches off the centerline of the track." Is that how  
14 you determined --

15 A The placement.

16 Q -- the placement of the rumble strips?

17 A Uh-huh.

18 (THEREUPON, Guarino Deposition Exhibit 5  
19 was marked for identification.)

20 Q Show you, Mr. Guarino, what has been marked  
21 as Guarino Deposition Exhibit 5. Is that a copy of a  
22 diagram that you prepared which is also part of your  
23 expert report marked as Guarino Deposition Exhibit 3  
24 that provides information regarding rail car  
25 measurements and other measurements from the

1 centerline of the tracks to come up with this 27 and a  
2 half inch --

3 A Yes.

4 Q -- figure? Just want to ask you a little  
5 bit more about how you came up with that number. You  
6 state in your report that you measured a number of  
7 rail cars and found that an average width of a rail  
8 car is approximately 128 and a half inches; correct?

9 A Yes.

10 Q How many rail cars did you measure?

11 A There was like a tanker, cargo car. I  
12 think there was two of them that I measured, tanker,  
13 cargo or a flat bed.

14 Q You measured a tanker and a cargo car?

15 A Yes.

16 Q Where did you measure them?

17 A Directly behind Dana Corporation.

18 Q Whose cars were they, do you know?

19 A God, I don't know.

20 Q Where is Dana Corporation located?

21 A Right off of, what is it, East 12th Street.

22 Q When did you do these measurements?

23 A Prior to compiling my report. It was  
24 during the winter months. I went out and I actually  
25 measured them.

1 Q Do you have a record of the measurement of  
2 the tanker?

3 A No, I just put it on my scratch pad and  
4 then I converted it onto the drawing I had.

5 Q The scratch pad you threw away?

6 A Yeah.

7 Q Do you have a record of the measurement of  
8 the cargo car?

9 A It all was on there. They were all  
10 standard width on there.

11 Q When you say on there, you mean on the  
12 scratch pad you threw away?

13 A Yes.

14 Q Well, in your report you say an average  
15 width of a rail car is approximately 128 and a half  
16 inches.

17 A It could vary.

18 Q If that's --

19 A It could vary.

20 Q If that's the average, what was the largest  
21 of those two cars?

22 A I think they varied maybe three inches at  
23 best.

24 Q You think the largest car, the tanker or  
25 the cargo car, was 131 and a half inches?

1 A At best.

2 Q But you don't have your notes to verify  
3 that?

4 A No.

5 Q Did you make any determination by research  
6 or otherwise whether there were any other types of  
7 rail cars that utilized the 19th Street tracks that  
8 were wider than 131 and a half inches?

9 A No, I didn't.

10 Q So your conclusion was based on looking at  
11 only two cars, a tanker and a cargo car, and then  
12 taking an average, even though one of the two of them  
13 may have been three inches larger; is that correct?

14 A That's why I said an average.

15 Q The answer is yes to my question?

16 A Yes.

17 Q So you don't have knowledge then as to the  
18 widest type of rail car that would be traveling, would  
19 have been traveling along West 19th Street when those  
20 tracks were in place?

21 A No, but I wouldn't think that the railroad  
22 would let them be any wider than that, because it's a  
23 standard width.

24 Q Well, how do you know?

25 A For some of the areas that they go through.

1 Q How do you know what a standard width of a  
2 rail car is? Have you ever worked on the railroad?

3 A No.

4 Q Have you ever measured rail cars before?

5 A No.

6 Q Have you ever looked at any federal or  
7 other regulations that establish a standard width of a  
8 rail car?

9 A No.

10 Q So you really don't have a basis to assume  
11 that they must have been standard, do you?

12 A No.

13 Q Now, in your report you also say a bicycle  
14 is approximately 30 inches in width. What did you do  
15 to make that determination?

16 A I just measured a couple bicycles to get a  
17 standard width.

18 Q How many bicycles did you measure?

19 A Three.

20 Q Where did you measure them?

21 A I measured the handle bars, that's what I  
22 mean.

23 Q Whose bikes were they?

24 A Well, one was mine and then there was my  
25 brother's and then there was one of the guys that



1 works for me.

2 Q What type of bike is your's?

3 A Mine is a mountain bike.

4 Q What type of bike is your brother's?

5 A I think Greg's is a mountain bike, too.

6 Q And what type of bike is the bike of the  
7 other guy at work?

8 A Just a regular, what do you call it, a  
9 sprint bike or a road bike.

10 Q What were the measurements of your mountain  
11 bike, end of handle bar to end of handle bar?

12 A 30 inches.

13 Q Do you have a record of that?

14 A Other than just measuring it myself.

15 Q I know, but do you have a written record of  
16 that measurement?

17 A No.

18 Q Was that on a scratch paper that you threw  
19 away?

20 A Yeah, yeah.

21 Q What was the width, and I guess you are  
22 measuring handle bars on your brother's mountain bike?

23 A His were the same, because it was basically  
24 on the same designs.

25 Q Who manufactured your mountain bike?

1           A       God, I don't know. Might have been a Huff,  
2 I don't know for sure.

3           Q       How about your brother, who made his  
4 mountain bike?

5           A       I didn't --

6           Q       What was the measurement of the regular  
7 road bike, the other guy at work?

8           A       28 inches.

9           Q       Did you go to any bike stores to determine  
10 whether any bicycles had any handle bar widths larger  
11 than 30 inches?

12          A       No, I didn't.

13          Q       Did you review any magazines or other  
14 literature to indicate whether bicycles had handle bar  
15 widths greater than 30 inches?

16          A       No, I didn't.

17          Q       You go on to say that also "a child would  
18 be reaching out pretty much straight forward." Would  
19 you tell me what you mean by that statement?

20          A       Well, the way I was figuring, you have your  
21 hands on the actual bike itself, you know, on the  
22 handle bars, and would reach out. You know, there is  
23 grab rails on them, you would reach out for the grab  
24 rail.

25          Q       Let's take a look at Guarino Deposition

1 Exhibit 5, at least the top part of that exhibit  
2 appears to be a rail car diagram you put there?

3 A Yes.

4 Q If I read your writing, you have got grab  
5 bars with an arrow toward a grab bar on the side of  
6 that car?

7 A Yes.

8 Q So you are saying that for purposes of  
9 forming your opinion you assumed that a minor riding a  
10 bicycle with a 30 inch handle bar would be reaching  
11 straight forward above the handle bar to grab onto the  
12 grab bar?

13 A By grabbing up.

14 Q Did you perform any tests to determine  
15 whether that assumption on your part was accurate, and  
16 I'm talking about whether someone who would be  
17 grabbing onto a moving train would be grabbing  
18 directly above a handle bar as opposed to let's say to  
19 the outside of a handle bar, to be towed along the  
20 train?

21 A No.

22 Q Did you observe anyone on a bicycle  
23 grabbing onto a moving train to determine whether your  
24 conclusion that they grab on straight above the handle  
25 bar was correct?

1 A No.

2 Q So you just made that assumption?

3 A Well, I would think that once you grabbed  
4 on, the grab bar would be straight ahead of you.

5 Q That's just what you think --

6 A Yes.

7 Q -- without any research or --

8 A No.

9 Q -- without any observation; correct?

10 A Yes.

11 Q And getting back to Guarino Deposition  
12 Exhibit 5, it was those assumptions that you made and  
13 those conclusions you drew that resulted in your  
14 opinion that the rumble strips, the centerline of the  
15 rumble strips should be 72 and a half inches from the  
16 centerline of the track; correct?

17 A Yes.

18 Q Now, let's just take a look at the diagram  
19 and see if I understand how you got to that point.

20 You measured the average rail car as you  
21 called it, 128 and a half inches from outside of grab  
22 bar to outside of grab bar; correct?

23 A Uh-huh.

24 Q Which would make the -- well, would make  
25 the centerline of the rail car 64 and a quarter inches

1 to the outside of the grab bar; is that right?

2 A Yeah.

3 Q Then how did you come up with your  
4 conclusion that the centerline of the rumble strip  
5 should be 72 and a quarter inches?

6 A I figured the center of the rumble strip.

7 Q That's what I'm saying. But how did you  
8 determine, you can explain it from the diagram here,  
9 how you came up with the number 72 and a half inches?

10 A Well, if you look at the actual width of  
11 the rumble strip, I tried to figure, place them in the  
12 middle so that they would, you know, be a deterrent, a  
13 good deterrent.

14 Q Well, the rumble strip, as I understand it,  
15 is, you said 16 to 17 inches long; right?

16 A In width, yes.

17 Q And so half of that rumble strip in width  
18 would be let's say 8 and a half inches, correct, if it  
19 was a 17 inch rumble strip?

20 A Yes.

21 Q Then how did you determine that the  
22 centerline of the rumble strip should be 72 and a half  
23 inches from the centerline of the tracks?

24 A That's where I placed it.

25 Q Why did you place it at that location?

1 A Tried to be more centered that way.

2 Q I don't understand what you mean by more  
3 centered.

4 A Well, with the dimension of the rumble  
5 strip and trying to figure the width of the grab bar  
6 and that, that's how I came up with that.

7 Q Is it fair to say just by the addition,  
8 that if from centerline of track, which is centerline  
9 of rail car, to end of grab bar was 64 and a quarter  
10 inches -- you agree with me on that?

11 A Yeah.

12 Q And if centerline of rumble strip to end of  
13 rumble strip was 8 and a half inches, is that right?

14 A Yeah, 72 and three-quarters.

15 Q That would be 72 and three-quarter inches,  
16 and you had suggested 72 and a half, that's how you  
17 came up with it; right?

18 A Well, I added wrong.

19 Q No, I'm just trying to determine, which is  
20 very close, it's off by a quarter inch, but that's how  
21 you got that number?

22 A That's how I got that number, yeah. I  
23 tried to place the bike in the middle of the rumble  
24 strip.

25 Q Okay. That's what I get. But if, for

1 instance, rail cars traveling on 19th Street were  
2 wider than 128 and a half inches, if some of them  
3 were, and you used the same analysis, you would have  
4 to put your rumble strip farther out than 27 and a  
5 half inches; correct, to have the bike in the middle  
6 of the rumble strip?

7 A Yeah, but actually the rumble strip -- I  
8 put the rumble strip for the center of the bike to  
9 travel in the center, but it was wide enough on the  
10 side to give them a variance one way or the other.  
11 That's why I did it that way.

12 Q Yeah, but assume for a minute here if your  
13 goal was to put the bicycle wheel in the middle of the  
14 rumble strip, if the rail car that you measured at 128  
15 and a half inches, if another rail car was wider than  
16 that that you didn't measure, you would have to have  
17 your rumble strip out farther based on that  
18 measurement, would you agree with me?

19 MR. SOLYMOSI: In order to do what?

20 Q To have the bicycle wheel in the middle of  
21 the rumble strip.

22 A Well, I was just coming up with a deterrent  
23 when I did the deterrent. That's what was my opinion  
24 on that.

25 Q I know, but I'm asking you, because you

1 told me you tried to locate the rumble strip so the  
2 center of the rumble strip was where the bicycle wheel  
3 would be, if the rail car measurement turned out to be  
4 wider because there are rail cars that you didn't  
5 measure that are wider than 128 and a half inches with  
6 grab bars, if you are going to have the bicycle wheel  
7 in the middle of the rumble strip, you would have to  
8 move the rumble strip farther out from the rail,  
9 correct?

10 A If you placed it, yeah.

11 Q Okay.

12 MR. SOLYMOSI: In order to have it dead  
13 center, Roger? I object to the form of the  
14 question.

15 MR. TAFT: No, the witness is answering the  
16 question. And I told him if he doesn't  
17 understand it, I'll be happy to repeat it.

18 A Well, what it was is it was a deterrent and  
19 I was -- when I measured it, I measured it --

20 Q Based on these numbers that we went over,  
21 which I'm now asking about, and I'm just saying that  
22 if you are trying to put the bicycle wheel in the  
23 middle of the rumble strip, one of your measurements  
24 like the width of the rail car is not wide enough,  
25 because you didn't measure the widest rail car, then